IN THE COURT OF APPEALS OF IOWA

No. 8-112 / 06-0745
Filed March 14, 2008

IN RE THE MARRIAGE OF ALICIA MARIE BROWN AND JUSTIN MATTHEW BROWN

Upon the Petition of
ALICIA MARIE BROWN,
Petitioner-Appellee,

And Concerning
JUSTIN MATTHEW BROWN,
Respondent-Appellant.

Appeal from the Iowa District Court for Adair County, Sherman W. Phipps, Judge.

Pro se appellant seeks review before the district court has an opportunity to rule on his motion to enlarge. **DISMISSED**.

Justin Brown, Fontanelle, appellant pro se.

David L. Jungmann of Jungmann & Hughbanks, P.C., Greenfield, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

EISENHAUER, J.

Alicia and Justin Brown were divorced in July 2002. The dissolution decree awarded physical care and monthly child support for their two-year-old son to Alicia and visitation to Justin. In September 2005, Alicia filed a petition to modify visitation and support. In October 2005, Justin withdrew his previously-filed motion to dismiss stating the parties agreed to use mediation to try to resolve the modification issues. An agreement was reached at mediation and both parties and their attorneys signed the January 6, 2006, handwritten mediation agreement. After the agreement was typed, Alicia signed the document and it was forwarded to Justin for his signature, but Justin refused to sign the agreement.

On April 10, 2006, the court held a status hearing and both parties were represented by counsel. Noting Justin had failed to sign the mediated settlement, the court ordered "counsel shall prepare, execute and file a Decree consistent with and in compliance with the terms of the Mediated Settlement." The court's decree of modification, filed on April 10, 2006, adjusted visitation, increased child support, and required additional monthly child support to remedy Justin's delinquency.

On April 20, 2006, Justin filed a motion to enlarge findings of fact arguing "mediation by its very nature is not enforceable. A Decree should never have been entered, even if a mediated settlement had been reached." On April 25, 2006, Alicia resisted the motion to enlarge and requested sanctions. In all of the above matters, both parties were represented by counsel. On April 28, 2006,

Justin, acting pro se, filed with the Adair County clerk of court the following document:

> Subject: Appeal to Supreme Court of Iowa
> Purpose:
> To reverse, over turn or take any actions the court deems appropriate with respect to the decision of the District Court Resulting from the actions of a hearing over mediation enter on 04/10/2006.

On May 2, 2006, the district court clerk forwarded the document to the Iowa Supreme Court, which transferred the case to this court.[1] On October 30, 2006, the district court denied Alicia's motion for sanctions, but declined to rule on Justin's motion to enlarge due to Justin's pro se appeal.

Justin raises two issues in his appellate brief:

> A) FAILURE OF THE APPELLEE TO MEDIATE IN GOOD FAITH
> B) ENTERING A MOTION THAT WAS NOT SIGNED THAT SHOULD HAVE BEEN STRICKEN AND NOT ENFORCED.

We review this equity action de novo. Iowa R. App. P 6.4. We have a duty to examine the entire record and "adjudicate anew rights on the issues properly presented." *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981).

We conclude there are no issues properly presented. Justin filed for appellate review of the court's modification order just eight days after filing his motion to enlarge the order and before the district court had an opportunity to

[1] On June 8, 2006, the district court held a hearing on the outstanding motions and ruled on Justin's attorney's application to withdraw (denied) and continued the hearing to August 8, 2006. On August 8, 2006, the court granted Justin's attorney's application to withdraw and Justin appeared pro se. The court granted Justin's oral request for a continuance to September 2006 and the issues were again continued to October 12, 2006, when a hearing was held. The court's October 30, 2006 decision dealt only with the sanctions issue. In November 2006, the court calendar's final entry states: "Motion to enlarge must be submitted to the trial judge for action, if any."

rule on the issues raised in his motion to enlarge. "It is a fundamental doctrine of appellate procedure that issues must be both raised *and decided by* the district court before we will decide them on appeal." *Bill Grunder's Sons Constr. Co., v. Ganzer*, 686 N.W.2d 193, 197 (Iowa 2004) (emphasis added). "We will not address an argument which the district court did not have an opportunity to consider." *Vincent v. Four M Paper Corp*., 589 N.W.2d 55, 64 (Iowa 1999). Since the district court never ruled on Justin's motion to enlarge, we do not have a decision to review. We dismiss Justin's premature appeal.

Alicia seeks appellate attorney fees, which are discretionary. *See In re Marriage of Krone*, 530 N.W.2d 468, 472 (Iowa Ct. App. 1995). We note Alicia was obligated to respond to Justin's premature appeal and prevailed. We order Justin to pay $1500 toward Alicia's appellate attorney fees. The appellate costs are taxed to Justin.

DISMISSED.